IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9493 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGU ALIAS BHAGUDIA LALSING RATHVA

Versus

STATE OF GUJARAT

Appearance:

MR MA KALATHIL for the Petitioner.

RULE SERVED for Respondent No. 1-3

Mr.M.K. Patel, Assistant GOVERNMENT PLEADER, for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/01/2003

ORAL JUDGEMENT

The petitioner-detenu has challenged his detention order dated 1.4.2002. By the aforesaid order, the petitioner is detained under preventive detention, as

it is found that he is a "dangerous person". Along with the detention order, the petitioner is served with the grounds of detention. In the said grounds, it is mentioned that the petitioner has committed theft of various motor cycles, particulars of which are given at serial Nos. 1, 2, 3 and 4 in the detention order. Statements of witnesses were also recorded by the detaining authority and the same are incorporated in the detention order, which show that the petitioner is a "dangerous person" and in order to prevent his dangerous activity, the detaining authority decided to detain him under the provisions of the Prevention of Anti-Social Activities Act ("PASA", for short). In the detention order, it is also mentioned that the petitioner is in judicial custody in connection with four criminal cases, which are mentioned at serial Nos. 1 to 4. However, it is mentioned that the petitioner may be released on bail at any time and, therefore, it is necessary to detain him under the provisions of PASA.

At the time of hearing of this Special Civil Application, learned Advocate for the petitioner argued that so far as the four cases, which are incorporated in the detention order, are concerned, they are all cases of theft, for which criminal cases are filed against the petitioner and he is already in custody. It is submitted that the so-called alleged incident is not of such a type, by which it can be said that there is a breach of public order.

It is also submitted that, in the detention order, it is mentioned that the petitioner is already in Jail, but there is no satisfactory explanation given in the detention order as to on what material the detaining authority has come to the conclusion that the petitioner may be released on bail at any time. He further submitted that the petitioner has not even applied for bail by filing an application and, therefore, when there is no material, on the basis of which it can be said that the petitioner is likely to be released on bail, the order of detention is required to be set aside as the detaining authority has not appropriately stated as to on what basis it is stated that the petitioner is likely to be released on bail.

Learned Advocate for the petitioner has placed reliance on the decision of the Apex Court in Amritlal & Others v. Union Government and others, AIR 2000 SC 3675. In paragraphs 4, 6 and 7, the Apex Court has observed as under :-

" ... ...

4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in Binod Singh v. District Magistrate, Dhanbad, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988."

xxx xxx xxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not

> available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.
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> 7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.
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> ... ..."

Learned Advocate for the petitioner has also submitted that in this case, the petitioner has also not moved bail application and looking to the cases, which are of serious nature, it cannot be said that the petitioner is likely to get bail in connection with the four criminal cases. In my view, the order of the detaining authority is required to be set aside in view of the aforesaid judgment of the Apex Court, especially when there is nothing on record to show that the petitioner is likely to be released on bail and when he is subjected to serious criminal cases which are pending against him. Apart from that, the petitioner has not even moved an application for bail. Under these circumstances, it can be said that the detaining authority has not properly considered the aforesaid aspect and the matter in question is also covered by the aforesaid decision of the Supreme Court. In that view of the matter, the petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

29th January, 2003 (P.B. Majmudar, J.)

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(apj)